IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

TUESDAY, THE 3RD JULY 2007 / 12TH ASHADHA 1929

WP(C).No. 13361 of 2006(N)

PETITIONER:

K.RAMADASAN, HELPER/WATCHMAN,
OFFICE OF THE ASSISTANT, EXECUTIVE ENGINEER,
BOAT BUILDING YARD, SAKTHIKULANGARA.

BY ADV. SRI.P.RAVINDRAN

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY ITS
SECRETARY, DEPARTMENT OF FISHERIES AND PORTS,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DIRECTOR OF FISHERIES,
KERALA FISHERIES DEPARTMENT,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI. P.NANDAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 13361/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE OFFICE ORDER NO. C. 227/42/69 DT. 11/4/69.

EXT.P2. COPY OF THE GO DT. 20/08/77 NO. GO MS NO. 105/77 DD.

EXT.P3. COPY OF THE GO DT. 8/11/95 GO MS NO. 64-65/F&F&PD.

EXT.P4. COPY OF THE REPRESENTATION BY THE PETITIONER TO THE R1 DT. 25/4/97.

EXT.P5. COPY OF THE REPRESENTATION BY THE PETITIONER TO THE R1 DT. 20/7/98.

EXT.P6. COPY OF THE JUDGMENT IN OP NO. 25851/98 DT. 26/3/99.

EXT.P7. COPY OF THE ORDER NO GO RT NO. 231/99/F&PD DT. 13/5/99.

EXT.P8. COPY OF THE JUDGMENT IN OP NO. 16576/99 DT. 15/12/2005.

EXT.P9. COPY OF THE ORDER NO. GO RT NO. 144/06/F&PD DT. 8/3/2006.

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K.BALAKRISHNAN NAIR, J.

W.P.(C) No.13361 of 2006 N

Dated this the 3rd day of July, 2007.

JUDGMENT

The petitioner was an employee under the respondents. Initially, he was an employee under the Kerala Fisheries Corporation. He was appointed in the Corporation by Ext.P1 order dated 11.4.1969 as an unskilled labourer. Later, he was absorbed into Government service under the Fisheries Department, subject to the terms and conditions contained in Ext.P2 Government Order dated 20.8.1977 on the winding up of the Kerala Fisheries Corporation. Clause (vi) of para 2 of Ext.P2 reads as follows:

> ***"The previous service of the employees under the Kerala Fisheries Corporation Limited will count for leave of all kinds, increments, surrender of leave and retirement benefits etc. under Government. Liability of Kerala Fisheries Corporation on this account will be settled as liability taken over by Government. The inter se seniority of the employees will be maintained."***

2. Based on this provision, the petitioner claims that he is entitled to be retained in the service till he attains the age

of 60 years, in the light of Rule 60(b) of Part I of the Kerala Service Rules. The said claim was rejected by Ext.P7 order of the Government. The petitioner challenged Ext.P7 before this court and this court, by Ext.P8 judgment, quashed Ext.P7 and remitted the matter for fresh consideration. In the said judgment, it was ordered as follows:

> ***"It is also clearly provided in the order that in case employees opted to be covered by K.S.R., they would be governed by the K.S.R. covering also service in the Kerala Fisheries Corporation. That the petitioner was only a helper and that the post as such is not named in the last grade service, shall not be taken as a reason for rejecting the claim of the petitioner in case he is otherwise eligible since the scale of pay in the post of the helper at the relevant time was only that of last grade service. In any case, having been absorbed in Government service as per Ext.P2, the case of the petitioner should be considered in the light of the conditions as appearing in Ext.P2. I quash Ext.P7. There will be direction to consider the case of the petitioner afresh, with notice to the petitioner taking into consideration the contentions taken by the petitioner centering round Ext.P2 and also the observations contained in the judgment. The***

needful shall be done within a period of 4 months from the date of receipt of a copy of judgment."

3. Pursuant to the said direction, the matter was again considered and rejected by the Government by Ext.P9. This writ petition is filed challenging Ext.P9 and seeking consequential reliefs, though the petitioner has already retired from service on 31.5.1999.

4. The respondents have filed a counter affidavit resisting the prayers in the writ petition. Heard.

5. According to me, the petitioner is not covered by Rule 60(b) of Part I of the Kerala Service Rules, in the absence of any specific order to that effect issued by the Government. His service on 7.4.1970 can never be covered by the definition of '**Last Grade Service'** and so, if he has to be considered as a Last Grade Servant, there should be an order issued to that effect by the Government.

6. Going by Clause (vi) of Para 2 of Ext.P2, I feel that the same does not cover the age of superannuation. The petitioner can claim the benefit of the Rule 60(b) Part I Kerala Service Rules, only if he was a Last Grade Servant as

on **7.4.1970** under the Government of Kerala or was holding an equivalent post notified by the Government to that effect. The Government has not passed any order to the effect that the Casual Labourers or unskilled labourers like the petitioner, who were working in the Kerala Fisheries Corporation, on their absorption in 1978, will be treated as Last Grade Servants for the purpose of Rule 60(b) of Part I of the Kerala Service Rules. Unless the case of the petitioner is clearly covered by the said Rule, this court is not justified in holding that the petitioner is entitled to the relief sought for.

In the result, writ petition fails and it is dismissed.

Sd/-

(K.BALAKRISHNAN NAIR)
JUDGE

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